

Appl. No. 10/090,532
Amdt. Dated March 28, 2005
Reply to Office Action of December 27, 2004

REMARKS

Claims 1-25, 54-57 and 63-66 remain in this application. Claims 26-53 and 58-63 were previously withdrawn as directed to non-elected species. Claims 1, 54 and 64 are amended, incorporating the subject matter in paragraphs [0011], [0033], [00316] and [00428] through [00430] of the specification, as well as Fig. 2.14 and original claim 49. No new matter is added.

Reconsideration of the subject patent application and allowance of all of the claims is respectfully requested in view of the foregoing amendments and the following remarks.

Rejections Under 35 U.S.C. § 102

Claims 1-7, 14, 18-20, 54, 55, 64 and 66 stand rejected under 35 U.S.C. § 102(b) as anticipated by Cook et al. (U.S. Patent No. 5,727,950) (“Cook”). The Examiner asserts that Cook discloses all of the limitations of independent claims 1, 54, 65 and 66, as well as all of the limitations of claims 2-7, 14, 18-20 and 55, which depend from either claims 1 or 54.

Applicants hereby resubmit and incorporate by reference the arguments filed in the October 7, 2004 Amendment for this case. The Examiner has rejected the argument in this Amendment that Cook teaches nothing more than conventional state-of-the-art “mastery” type systems and methods, while the present application is directed to a novel method and system for instruction based on monitoring the “support” needed by an individual student to learn. The Examiner refused to give weight to the argument that, contrary to the present application, Cook does not disclose using the “support” as the performance measure. The Examiner asserts that this distinction between Cook and the present application, although described in the specification, is not specifically claimed.

Applicants disagree with the Examiner’s argument as it pertains to independent claim 66, which includes the limitation of “assessing the student’s response to a task by evaluating the amount of support given the student regarding the task,” and “progressing or regressing the student based on monitoring the level of support needed” to complete the task. As discussed in

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the October 7 Amendment, Cook is limited to evaluating a student based on conventional “mastery” type performance standards, i.e., the number of right and wrong answers. Cook does not disclose or suggest the limitations of assessing the student *by evaluating the amount of support* given to the student, or progressing or regressing the student *based on monitoring the level of support* needed by the student. Furthermore, the other cited prior art does not disclose or suggest this limitation. It is axiomatic that anticipation under 35 U.S.C. § 102 requires the presence in a single prior art disclosure of each and every element of a claimed invention.

Lewmar Marine, Inc. v. Barent, Inc., 3 U.S.P.Q.2d 1766, 1767 (Fed. Cir. 1987). Accordingly, Applicants submit that the Examiner has failed to establish a *prima facie* case of anticipation of claim 66 in view of Cook, and Applicants therefore request that the rejection of claim 66 be withdrawn.

Applicants have amended claims 1, 54 and 64 to include the following limitations:

Claim 1: “assessing the student's performance based on the level of support presented to the student;”

Claim 54: storing “an assessment of the student's performance based on the support presented to the student;” and

Claim 64: “assessing overall performance of the student based on responses related to the first learning activity or skill level and responses related to the second learning activity or skill level.”

Support for these amendments can be found in paragraphs [0011], [0033], [00316] and [00428] through [00430] of the specification, as well as Fig. 2.14 and original claim 49. These amendments incorporate the features of the present application described above, i.e., that the type and amount of support provided to the student is used to measure the student's performance. As discussed above, Applicants assert that these limitations are not disclosed or suggested by Cook. In addition, these limitations are not disclosed or suggested by the other cited prior art. Accordingly, Applicants submit that claims 1, 54 and 64, as amended, are not anticipated and are nonobvious over Cook and Applicants request that the rejections of these claims be withdrawn.

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Claims 2-7, 14, 18-20 and 55 are ultimately dependent on either claim 1 or claim 54, and therefore incorporate all of their limitations. As claims 1 and 54, as amended, are believed to be allowable, Applicants submit that claims 2-7, 14, 18-20 and 55 are also allowable and therefore request that the rejections of these claims be withdrawn.

Rejections Under 35 U.S.C. § 103

Claims 8-13, 15-17, 21-25, 56, 57 and 65 stand rejected under 35 U.S.C. § 103(a) as obvious over Cook in view of Wasowicz (U.S. Patent No. 6,435,877). The Examiner asserts that Cook teaches the aspects of the invention described above, but fails to specifically teach the limitations of these claims. The Examiner purports to find the teachings of these claims in Wasowicz.

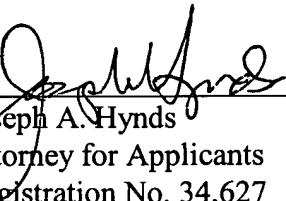
Claims 8-13, 15-17, 21-25, 56, 57 and 65 are all ultimately dependent on independent claims 1, 54 or 64 and therefore incorporate all of the limitations of these claims. Applicants submit that Wasowicz and the other cited prior art fails to cure the deficiencies of Cook discussed above. It is also noted that the Examiner acknowledges that Wasowicz is only relied upon for its teaching of language education and not for methods of presenting support to a student (p. 5, para. 1 of the Office Action). Thus, as it is believed that neither the Cook/ Wasowicz combination nor the other cited prior art anticipate or render obvious claims 1, 54 and 64, Applicants submit that dependent claims 8-13, 15-17, 21-25, 56, 57 and 65 are also novel and nonobvious over the cited combination. Accordingly, Applicants request that the rejections of these claims be withdrawn.

Furthermore, since claim 1 is believed to be allowable and is generic with respect to withdrawn claims 26-53 and claim 54 is believed to be allowable and is generic with respect to withdrawn claims 58-63, applicants respectfully request that claims 26-53 and 58-63 be reinstated and passed to allowance as being dependent from allowable base claims.

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Accordingly, Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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